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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re J.R., a Person Coming Under the  
Juvenile Court Law.

H035566  
(Monterey County  
Super. Ct. No. J43903)

MONTEREY COUNTY DEPARTMENT  
OF SOCIAL & EMPLOYMENT  
SERVICES,

Plaintiff and Respondent,

v.

K.R.,

Defendant and Appellant.

K.R. (father) appeals from the order terminating his parental rights to J.R. (son) under Welfare and Institutions Code<sup>1</sup> section 366.26. Father argues that the juvenile court erred in denying his request for a contested hearing on the sibling relationship exception to termination of parental rights under that statute.

We find no error and shall affirm.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

*A. Section 300 petition*

In March 2009, the Monterey County Department of Social and Employment Services (Department) filed a petition under section 300, subdivisions (g) (no provision

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<sup>1</sup> Further unspecified statutory references are to the Welfare and Institutions Code.

of support) and (j) (abuse of sibling), alleging that son (then nine months old) was at substantial risk of abuse or neglect because father had sexually and physically abused son's then 14-year-old sister (older daughter) and physically abused son's then 13-year-old sister (younger daughter).<sup>2</sup> Father had been arrested and was then incarcerated in the Monterey County jail.

According to the petition, the younger daughter reported that father beat her with a belt for not doing her homework and for not doing well in school. A social worker observed that the younger daughter "had multiple 1-inch wide linear bruises on her legs and thighs in various stages of healing." The younger daughter told the social worker that her father also physically and sexually abuses the older daughter, and has sexual intercourse with her in the bathroom of a store he owns.

The older daughter was interviewed and confirmed that father abused her, both physically and sexually. The abuse began when she was in the third grade and the last time he had sex with her was the previous Sunday at one of the stores he owns. The older daughter said that her mother was aware of the sexual abuse and argues with father about it, but does not protect the older daughter because she is afraid of father.

According to the older daughter, when her mother was in the hospital giving birth to son, father made the older daughter sleep in his bed and have sex multiple times, both at night and during the day. The older daughter became pregnant, and her parents arranged for her to have an abortion at Planned Parenthood. After the abortion, father continued to force her to have sex with him.

Approximately two months prior, the mother walked in on father having sex with the older daughter and yelled at him, "Do you want her to get pregnant again?" The

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<sup>2</sup> Separate section 300 petitions were apparently filed with respect to the older and younger daughters, but those petitions are not part of the record.

parents argued and father broke furniture, punched holes in the television with his fist, broke the sound system and the family's computer.

The older daughter also reported that father would hit her whenever she would talk about the sexual abuse to her mother. The most recent time she told her mother about his abuse, father took the older daughter into the back yard and "hit her head against the side of the house on a brick."

When the social worker went to the house to interview the mother, the social worker observed "over eighteen bottles of liquor and mixers on top of the refrigerator, and more than twelve empty beer bottles strewn around the back yard and on a kitchen window sill."

In March 2009, all three children were placed in protective custody and then in a foster home.

*B. The section 366.26 selection and implementation hearing*

*1. Section 366.26 report*

On December 30, 2009, the Department filed a section 366.26 selection and implementation report recommending that the court approve adoption as the permanent plan for son, terminate mother and father's parental rights and set a permanency planning review hearing. The report stated that son was residing in a prospective adoptive licensed foster home and was "doing exceptionally well."

According to the report, all three children were initially placed in the same foster home, but were moved after two months when the younger daughter began having behavioral problems and threatened the foster parents. The two girls were eventually placed with a maternal uncle and his immediate family, but the Department's efforts to place son with a suitable relative "were sabotaged by the children's mother."

Following their separation, the two girls continued to visit with son, but "[g]iven the intensity of the relationship that [older daughter] and [younger daughter] have with [son] and previous statements made by [older daughter] indicating that she was only alive

because of [son], the Department proceeded with great care and concern for [the two daughters'] emotional well being, while balancing [son]'s need for permanency.” According to the report, “[v]isitation has occurred on a bi-weekly basis beginning on November 17, 2009 and has been going very well. When [the two daughters] are ready, the prospective adoptive parents for [son] would like to meet them in attempts [sic] to establish a relationship with them so that sibling contact post adoption may occur.”

In a section entitled “Desirability of maintaining Contact with Siblings,” the report states, “There is no question that [the two daughters] are bonded to [son]. As his older sisters they have helped care for him for the first nine months of his life and have a sense of responsibility to him. [Son] has also brought happiness to [the two daughters] during very stressful and traumatic times. However, at [son]'s young age, the strength of that bond is not reciprocal. [¶] Sibling contact is recommended to occur on a regular basis as long as it remains in [son]'s best interest. The prospective adoptive parents are interested in meeting [son]'s sisters . . . in hopes of establishing a relationship with them to foster sibling contact post adoption. However, upon the adoption finalization, contact will ultimately be at the adoptive parent's discretion.”

## *2. The January 15, 2010 hearing*

On January 15, 2010, the juvenile court held a hearing pursuant to section 366.26. Mother and father were present and represented by counsel. Mother requested a contested hearing on the recommendations contained in the Department's selection and implementation report. The juvenile court continued the hearing, allowing mother to brief the issue of her right to a contested hearing, as well as the matters to be raised at such a hearing.

Counsel for father advised the court that father wanted to have different legal counsel, and that a substitute attorney had been identified by the court to replace him. He also noted that father may wish to join mother's request for a contested hearing.

3. *The January 22, 2010 hearing*

On January 21, 2010, mother filed a memorandum of points and authorities in support of her right to a contested hearing on the issues raised by the Department's recommendations set forth in its section 366.26 selection and implementation report. Among other issues raised,<sup>3</sup> mother argued that son's adoption would substantially interfere with an existing sibling relationship. Her offer of proof on that subject consisted of the following: "The dependent child has an existing relationship with his siblings termination of which is an exception to adoption. (Welfare and Institutions Code sec. 366.26(c)(1)(B)(v); In re Valerie A. (2007) 152 Cal.App.4th 987.)" (Underscore in original.)

At the hearing on January 22, 2010, the juvenile court granted mother's request to set a contested hearing, conditional on mother providing an offer of proof with specific facts on the issues no later than February 5, 2010. A further hearing was set for February 24, 2010.

4. *The February 24, 2010 hearing*

In mother's offer of proof, she stated her two daughters would testify at a contested hearing they had daily contact with son and participated in his care until he was nine months old and the children were removed from the parents' home. According to mother, the daughters would also "testify about the psychological and emotional attachments they formed with [son] and his responses to them," as well as "the effect adoption will have on them."

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<sup>3</sup> Mother's brief also indicated that she intended to challenge the Department's recommendations on the grounds that son was not adoptable, the Department's report was inadequate, there was a beneficial relationship between son and herself, the Department failed to provide mother with an opportunity to have contact with son, the Department failed to provide information to relatives concerning guardianship as an alternative to adoption and the Department failed to investigate appropriate relatives for placement.

At the hearing, the juvenile court found that the offer of proof was insufficient to set a contested hearing. Specifically, the juvenile court noted that the offer of proof was devoid of “evidence . . . that severance of the [sibling] relationship would be detrimental to [son].” Mother was given until February 26, 2010, to request reconsideration of the court’s ruling.

On February 26, 2010, mother made a request for reconsideration, supported by sworn declarations from her two daughters. The older daughter’s declaration described how she cared for her brother from the time he was born until they were removed from their parents’ home, after which she “became like his mom.” Son would hold up his arms to her and call her, “Mom.” He did not want to leave her arms and would hold on tightly to her if others came near. For a time, he would not allow anyone else to feed him. After he was moved to a different home, son saw her “as someone permanent in his life.” At a certain point, the older daughter realized that he “was my entire life. . . . I couldn’t live without him.” She “wouldn’t let [her] parents lose [son].” If she “could take [son] and adopt him [her]self, [she]’d give up all [her] hopes and dreams and sign the adoption papers in a heartbeat.”

The younger daughter described how she helped take care of son after his birth, played with him and watched movies with him. She said there “were times when he wouldn’t let anyone else touch him besides me[, and] . . . [he] was always picky about who came near him or tried to pick him up.” She has pictures of him on her wall and thinks of him all the time. She “love[s] him dearly and . . . can’t live without him.”

##### 5. *The March 3, 2010 reconsideration hearing*

At the hearing, father addressed the court, complaining that over the past year he has only seen his attorney twice and he has “a lot of questions.” He felt he was not “being represented correctly.” Later in the hearing, father joined in mother’s request for reconsideration.

Mother's counsel described the process by which he obtained the declarations from the two daughters, and that he explained to them a declaration is made under penalty of perjury. The two daughters reviewed the draft declarations he prepared for them, made corrections, then signed them.

Son's counsel indicated that his client, then only 21 months old, could not "understand these matters" or address the court. However, he had spoken with counsel for the daughters, and "[daughters' counsel] told me how his clients feel and what type of connection [with son] they believe they have." Son's counsel continued, "Now, that's not the law, in terms of the substantial relationship, but from their testimony, that would infer what my client feels or doesn't feel."

The juvenile court stated that there was no dispute about son's adoptability, and that it was mother's burden to show the application of an exception to termination of parental rights. Though the declarations make clear that the two daughters love their brother and feel a bond with him, the offer of proof was not sufficient to show "an existing, strong close bond by [son] with his siblings" such as would warrant a contested hearing on the sibling relationship exception.

6. *The March 12, 2010 selection and implementation hearing*

At this hearing, mother and father renewed their request for a contested hearing and objected to the Department's report and recommendations. Father reiterated his complaint that he was not "not being represented," and he "need[s] somebody to come down and talk to me."

The juvenile court denied the renewed requests for a contested hearing, terminated mother's and father's parental rights and ordered a permanent plan of adoption for son. The Department was directed to "take steps to encourage interactions between" son and his two sisters, "subject to the discretion of the [assigned] social worker."

## II. DISCUSSION

Father argues that the juvenile court erred in denying him a contested hearing on the sibling relationship exception to termination of parental rights since the offer of proof constituted prima facie evidence that the exception applied. We disagree.

The juvenile court has the duty to provide stable, permanent homes for all children who are dependent children of the court. (§ 366.26, subd. (b).) Once the juvenile court determines by clear and convincing evidence that it is likely a child will be adopted, “the court *shall* terminate parental rights and order the child placed for adoption” (*id.* subd. (c), italics added), unless the court finds a compelling reason for determining that termination would be detrimental to the child under one or more specific exceptions. (*Id.* subd. (c)(1)(B).) One such exception is where “[t]here would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (*Id.* subd. (c)(1)(B)(v).) To establish this exception the parent must show: (1) a significant sibling relationship exists; (2) termination of parental rights would substantially interfere with that relationship; and (3) ending the sibling relationship would be detrimental to the child being adopted. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 952, and see *In re Celine R.* (2003) 31 Cal.4th 45, 54.) However, the law is clear that the effect of an adoption on the *sibling* is irrelevant; what matters is the effect on the adoptive child. (*In re Celine R.*, *supra*, at p. 53.) If the parent makes this showing then the juvenile court balances the benefit to the child of continuing the sibling relationship against the benefit of adoption. (*In re L. Y. L.*, *supra*, at pp. 952-953.) Even if a sibling relationship exists that is so strong that its severance would cause



the child detriment, the court may still conclude that the detriment is outweighed by the benefit of adoption. (*Ibid.*)

“[T]he juvenile court has discretion to require the parent(s) seeking a contested hearing on the sibling exception to make ‘an offer of proof to clearly identify the contested issue(s)’ prior to determining whether a hearing is warranted.” (*In re Earl L.* (2004) 121 Cal.App.4th 1050, 1053, quoting *In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122.) “The offer of proof must be specific, setting forth the actual evidence to be produced, not merely the facts or issues to be addressed and argued.” (*In re Tamika T.*, *supra*, at p. 1124.)

Thus, the offer of proof in this case needed to set forth specific evidence on the three elements of the sibling relationship exception: (1) a significant sibling relationship exists; (2) there would be substantial interference with the relationship if parental rights are terminated; and (3) ending the relationship would be detrimental to the child being adopted. While the daughters’ declarations may have sufficed to show the first two of these elements, they failed to present competent evidence on the third, i.e., the detrimental effect on their brother of ending that relationship.<sup>4</sup>

The daughters’ observations of how son reacted to them during their visits, while undoubtedly accurate, are not competent evidence of either the strength of his emotional bond with them or the impact on his emotional wellbeing if that bond is disrupted. Son lived with the daughters in the family home from the time of his birth until he was nine months old, at which time they were all removed from that home. They then lived in the same foster home, but only for two months. Daughters subsequently visited son up to

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<sup>4</sup> This should not be interpreted as a failure by daughters. They are no more responsible for the outcome of this case than they are to blame for the turmoil and upheaval they and their brother have experienced. We presume that this message is being made clear to them by their therapists and counsel if by no one else. The responsibility and blame rests squarely upon father, who physically and sexually abused them, and mother, who knew about but failed to protect them from father’s abuse.

three times a week until September 2009, but those visits were first limited to once a week and then bi-weekly in order to allow son to bond with his prospective adoptive family. In sum, daughters lived in the same house as son for the first 11 of his 20 months, visited him up to three times a week for the next four to five months (May to September 2009) and visited him once a week or bi-weekly for the next five to six months (September 2009 to March 2010). Whether a 21 month old could form a significant emotional bond with his sisters during this time, given the upheaval associated with the different placements and removals, let alone whether he would be detrimentally affected by ending that relationship, are not subjects that a layperson is qualified to address. These subjects are better addressed by experts, such as a developmental psychologist or someone else qualified in the area of emotional development of preverbal children.

Like the juvenile court, we have no reason to doubt that the two daughters care greatly for their younger brother and would be negatively impacted if their relationship with him were to end.<sup>5</sup> However, we reiterate that insofar as the sibling relationship exception is concerned, what matters is the effect of the adoption on the prospective adoptive child, *not* the effect of an adoption on the siblings. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53.)

Accordingly, the juvenile court properly denied the father's request for a contested hearing on the sibling relationship exception.

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<sup>5</sup> Since the adoptive parents have expressed an interest in allowing the daughters to have an ongoing relationship with son, it is by no means a foregone conclusion that their relationship with him will end upon his adoption. Assuming the responsible parties agree it is in daughters' and son's best interests, we hope that it does not.

**III. DISPOSITION**

The order terminating father's parental rights to son is affirmed.

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Premo, J.

WE CONCUR:

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Rushing, P.J.

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Elia, J.